The Solicitors' Journal

VOL. LXXXVIII. **Saturday, April 29, 1944.** No. 18

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*
ADVERTISEMENTS: Advertisements must be received not later than first post Tuesday, and be addressed to The Manager at the above address.
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

Current Topics.

Work of the Central Criminal Court.

THE statement made by Mr. Justice CASSELS from the Bench in the Central Criminal Court on 19th April with regard to the work of that court should have an immediate and salutary effect. His lordship called the attention of justices and their clerks outside the strict limits of the jurisdiction of the Central Criminal Court to the undesirability, except in cases of real necessity, of committing persons for trial to that court. A careful reading of the Criminal Justice Act, 1925, s. 14, as amended by the Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 6, subs. (3), his lordship said, showed that three matters had to be considered, namely, expediting the trial, greater convenience, and the saving of expense. It was the citizen's duty to give evidence when called upon so to do and he could have no objection if that merely meant an attendance for a few hours at his local assize town or the place where the quarter sessions for his county or borough were held, but when it meant a long railway journey and such accommodation as he could find away from home he was entitled to be heard in protest. Equally was it the citizen's duty to serve upon a jury when called upon so to do, and it was rare indeed that objection was publicly made, whatever inconvenience to his or her private affairs might be involved in the juryman or jurywoman's attendance, but when the discharge of the duty meant sitting for several days listening to the evidence in a case concerning an offence alleged to have been committed in a district many miles away from the jurisdiction of the court, the members of a jury might well be excused the reflection that another jury from the particular county or borough concerned, and sitting in another court, might well have been impanelled to do its own work. The statute by which accused persons might be committed for trial to the Central Criminal Court instead of to the usual court was never intended to mean that cases committed for trial after the commission day of the local assizes or after the quarter sessions must necessarily be sent there. It was only intended to be applied in exceptional cases where an accused person might have to wait several months in custody before his trial, and where no other convenient court was available, and where there would be no great inconvenience to witnesses, and where there would be a saving of expense. The court was not to be taken as laying down a rule, but if bail could be allowed, if unreasonable inconvenience was likely to be caused to witnesses, if the county or borough would be put to large additional expense, if police officers were likely to be absent for some days from the places where they usually performed their duties, then justices should refrain from calling into operation the exceptional discretion given them by s. 14 of the Criminal Justice Act, 1925, and should commit for trial in the ordinary way, and their clerks should advise them accordingly. His lordship concluded by saying that if a case was committed under that section of the Criminal Justice Act, 1925, the reasons for so committing it should be communicated to the court. The absence or insufficiency of such reasons might cause the case to be sent back.

H.M. Forces: Service of Legal Process.

A MEMORANDUM has just been issued for the information of solicitors by the Lord Chancellor's Department (H.M. Stationery Office, price 1d.) dealing with the service of legal process in civil proceedings on members of His Majesty's Forces. The legal process to which the memorandum relates includes process of the county court as well as the Supreme Court, and includes interlocutory process, such as summonses and notices, as well as originating process such as writs of summons, petitions and originating summonses in the High Court, and, for the county court, ordinary and default summonses and originating applications. It states that the facilities offered by the Service Departments differ according to whether the defendant is serving in this country or beyond the seas. If the defendant is serving beyond the seas, there are obvious reasons why his commanding officer may not wish him to be troubled by the receipt of legal process, and, if he were to receive it, he might find it difficult or impossible to take the appropriate steps for defending the proceedings. Moreover, the plaintiff must usually obtain the leave of the court before he can attempt to serve process outside the jurisdiction. If the plaintiff does not know whether the defendant is serving in this country or beyond the seas, the solicitor may inquire of the appropriate Service Department by letter in the manner prescribed in the memorandum. Readers are referred to the memorandum for the very full details it contains on this matter. Where personal service is required by the rules but cannot be effected, there is the possible alternative of substituted service. To obtain an order for substituted service it must be shown amongst other things that prompt personal service cannot be effected and that, if service by some other means were allowed, the process would in all probability come to the knowledge of the person to be served. In either case, therefore, it is necessary for the plaintiff's solicitor to know whether prompt personal service is possible. The method of discovering this and the further facilities for service differ according to which of the Service Departments is concerned. The memorandum contains detailed instructions on the facilities for service in the case of persons serving in the Army, the Navy and the Air Force respectively. The memorandum also points out that if rules of court prescribe a manner of service other than service by post and service cannot be effected in that manner, it may be open to the solicitor to apply for an order for substituted service by post. The solicitor may make use of the information given in the memorandum for the purpose of an application for substituted service by post, and for service by post, when the order for substituted service has been obtained, or (without obtaining any such order) in cases where service by post is permitted by the rules of the court. Where process may, under the rules of the court, be served by an officer of the court, as in the case of county court process, the appropriate Service Department will pay the same attention to a letter written by an officer of the court endeavouring to serve process for the plaintiff as they would pay to a letter written by the plaintiff's solicitor. It is added that the facilities mentioned in this memorandum are not necessarily exhaustive, and a solicitor may avail himself of any means of service on a defendant in this country which may be permitted by the appropriate Service Department in any particular case or class of case and by the law and practice of the court concerned. In no case, however, will a department disclose the private address of the defendant. Every practising solicitor should obtain a copy of this extremely useful memorandum.

Company Law Amendment.

THE eleventh day of the sittings of the Company Law Amendment Committee was occupied with taking the evidence of Captain H. N. HUME, M.C., and of Mr. BIRCH, F.C.A., Mr. A. T. EAVES, F.C.A., and Mr. C. GRIEG, M.B.E., F.C.I.S., representing the National Association of Trade Protection Societies. Captain HUME, who is at present working with the Ministry of Supply, is the managing director of the Charterhouse Investment Trust, Ltd., and other allied companies. Captain HUME'S view with regard to the name of a company was that the words "British" or "British Empire" should be used only with the consent of the Registrar, and that the use of the word "Bank" in the title should be restricted. He was of the opinion that no greater detail than that already required by the Act of 1929 is needed in a company prospectus or offer of sale of shares, and he suggested the insertion of new clauses to ensure that it should be impossible

for concerns having neither resources nor a full sense of responsibility to enter the issuing business. To avoid applications for shares by "stags," he suggested that it should be made legally permissible to use a form of application which cannot be withdrawn or cancelled for a period of (say) two weeks. He was in favour of abolishing the distinctions between public and private companies; of showing separately in the profit and loss account the amounts provided for taxation and for depreciation of fixed assets, with appropriate explanations, and of the publication of consolidated balance sheets where the assets of a holding company are represented as to more than 50 per cent. by investments in or advances to subsidiary companies. The National Association of Trade Protection Societies desired that the provisions applicable to a members' voluntary winding up be repealed, on account of the abuse of this procedure by directors who make dishonest statutory declarations of solvency. They also submitted that the period before the commencement of the winding up during which floating charges may be declared void under s. 266 should be extended from six months to twelve months. They further asked that the Act should be amended so as to alter the effect of the decision of the House of Lords in *Ex parte Barnes* that no person's public examination can be ordered unless the Official Receiver expresses the opinion that he has been guilty of fraud. A final and most useful suggestion by the Association is that a declaration of correctness, bearing a penalty, should be made to ensure that all returns required to be filed by companies are properly made.

Repair of Houses.

A DETAILED Ministry of Health circular (49/44) of 17th April to housing authorities and county councils in England gives a variety of information on matters connected with housing repairs, and on practical points of interest to local authorities, householders and their solicitors. Local authorities are advised to frame their programmes as soon as practicable in the light of experience and the labour likely to be available as ascertained by reference to the local officer of the Ministry of Labour and National Service. The programmes should provide in particular for the completion, in so far as it may be practicable, of all war damage repairs by the end of the year. Every effort will be made by the Government to see that labour and materials are available. If local authorities experience difficulty in making such provision they should at once inform the Senior Regional Officer of the Ministry. It is said that the limit of expenditure laid down, viz., £500 per house or £400 per flat or similar tenement, is meant to cover the whole building costs, including such items as fees of outside architects by the local authorities, employment of clerk of works, etc., and such fittings as cookers, gas and electric lighting and accessories. The expenditure is intended to relate to any work carried out on any building after the issue of circular 2871 (i.e., the 11th October, 1943), regardless of any work that may have been done on that building before that date. The figure, however, is a comprehensive figure, including repair of war damage, restoration of dilapidations, adaptation or conversion. It is also pointed out that proposals by local authorities for expenditure in exceptional circumstances in excess of £500 per house or £400 per flat, as the case may be, should be submitted to the Senior Regional Officer. Where a private owner in similar exceptional circumstances wishes to undertake building work costing more than £500 per house or £400 per flat he must send in his application for a certificate to the local authority. The application should not be sent direct by the owner to the Senior Regional Officer. Where a local authority regard the owner's application as reasonable and wish to grant a certificate, they should refer the case to the Senior Regional Officer; if he approves, the local authority should send the certificate and the application form C.L. 1136 to the Regional Licensing Officer, notifying him of the Senior Regional Officer's approval. If, however, they decide to refuse the application, no reference to the Senior Regional Officer is necessary. The kind of exceptional case in mind is where the work is justifiable and would provide additional family accommodation and where labour and materials can be made available without detriment to other more urgent essential work. When a private owner wants timber, steel or cast iron he should apply to the Regional Licensing Officer whether he requires a building licence or not, except that in the case of timber, where no building licence is required, application should be made direct to the Area Officer of the Timber Control. The War Damage Commission has undertaken to supply local authorities, as soon as possible, with lists of all houses so far classified by the Commission as likely to be "total losses." If a house was damaged before the 1st January, 1943, and is on the list supplied, the Commission cannot pay for its repair. Other houses to which the damage is merely superficial may be presumed repairable at the Commission's expense. Where, however, substantial repairs are required, the local authority should ask the Commission whether it is safe to proceed with repairs. This precaution is necessary owing to the provisions of the War Damage Act as to conversion of cost of works into value payments and of the Treasury direction as to injustice. The Commission has undertaken to give urgent priority to any such inquiries, which may be made over the telephone.

The Police Courts: Matrimonial Cases.

IN an article in the *Star* of 11th April, Mr. W. J. H. BRODRICK, who recently retired after completing fourteen years' service as a metropolitan police magistrate, had some interesting things to say about the matrimonial side of the work of the magistrates' courts. He pointed out that it is a common practice of the assize courts to convert separation orders made in police courts into decrees *nisi* on the production of a certificate from the police court coupled with some slight evidence by the injured party. The police court is, in a very real sense, the poor man's divorce court, but it is, he wrote, a rough-and-ready court, and the precautions against fraud and collusion, which have been elaborated by the Probate, Divorce and Admiralty Division over many years, cannot be applied under Acts which regulate courts of summary jurisdiction. For the satisfactory working of the present system legislation will be required. Something of the strictness which belongs to the Divorce Court, for example, in the matter of service of the summons, will have to be introduced, and the absurd rule that the police court cannot entertain application on the ground of adultery, if the adultery is more than six months old, will have to be modified. Writing with a real sense of the ability of lay justices, Mr. BRODRICK expressed his opinion against the creation of new matrimonial courts to consist of one professional magistrate with two lay justices, on the grounds that matrimonial cases are often highly technical, and in a large proportion of cases the magistrates would have to retire to discuss the law, thus bringing about delay and congestion. Moreover, litigants in person find it easier to put their case before a single individual, rather than to a tribunal of three whose minds seldom worked in unison. Mr. BRODRICK added, however, that if the change is to be made generally in London it will be desirable to take care that the lay justices do not sit in the districts to which they belong. Especially if they are engaged in local social or political work, it is almost impossible to ensure that they do not know something about the case or the parties before the case comes on; or—and this is just as bad—one or both of the parties will think so. There is much to be said in support of Mr. BRODRICK'S preference for a professional magistracy in the matrimonial courts. The other side of the question is, of course, that lay magistrates throughout the country are daily deciding, with the aid of their learned clerks, difficult questions of law on desertion, cruelty and condonation, and most advocates who appear before them will agree that their work is done ably and expeditiously. In a not too thickly populated area in the provinces it is difficult to see how a resident magistrate, lay or professional, can be without some local knowledge of the inhabitants, although no doubt a trained magistrate will be more likely to disregard matters which are not proved in evidence before him. However, whatever else may be controversial, it cannot be denied that in the work of the probation officers in the matrimonial cases coming before the justices there lies one of the greatest contributions made by any single institution to the upholding of the sanctity of marriage in this country. Mr. BRODRICK paid a well-deserved tribute to their work. Is it too much to hope that something analogous may in the future be introduced into the Divorce Division of the High Court, so as to effect a decrease in the numbers of marriages which come to an untimely end in that court?

The Police Courts: Criminal Cases.

ANOTHER correspondent to the daily Press, namely, to the *Daily Telegraph* of 14th April, signing himself "County Magistrate," also put forward some useful suggestions and a plea for the early reconstruction of the police courts. He expressly did not complain of the lay chairman, provided that he had a competent clerk. The members of the Bench, he wrote, are generally men of common sense and unbiased, though there is an undoubted tendency to support the police. The writer argued that no accused person should have to fight his own battle unaided—the odds against him were too great. He suggested that a member of the Bench, by rota, should be appointed to give assistance, and that he should advise the accused whether to plead guilty or not guilty, give him help in stating his case and cross-examine witnesses on his behalf. If it was contended that this was beyond the powers of the magistrate, it only proved how much more in many instances it was beyond the powers of the accused. In rural districts the accused was usually quite incompetent to conduct his own case. He had no notion of questioning witnesses or the police. When directed to confine himself to questions he invariably made a rambling statement. When checked he relapsed into silence, often interpreted as a guilty silence. The language of the court was entirely foreign to him, and efforts were rarely made to render it intelligible. He might be offered the choice of trial by jury, but if there were advantages therein he was ignorant of them. Finally, if lucky, he might be "bound over," a proceeding which is seldom explained in simple English. It was no uncommon occurrence for a man to plead guilty—and be convicted—when it had become obvious that he was not guilty of the actual charge. The writer has stated "what oft was thought, but ne'er so well expressed" by many persons

with daily experience of the police courts. Views as to what may be the remedies for these ills are many, but all will agree that whatever reform may be adopted, its paramount object must be to make the accused feel sure that he understands every step in the case, and that he has the fullest opportunity of putting forward his own case.

Community Defamation.

WE are indebted to a correspondent for some interesting facts about the laws of other countries on the defamation of racial or religious bodies in their midst. The problem has been faced and dealt with in the framework of democratic systems, he writes, but no such law has been found in countries living under non-democratic forms of government. The Dutch code was amended on 19th July, 1934, by the addition of the following two sections: Article 137 (*c*): A person who intentionally expresses himself in public, whether verbally or in writing, or in pictures in an insulting manner in regard to a group of the population or in regard to persons belonging to such a group of the population will be punished by imprisonment up to one year or to a fine up to 300 guilders. Article 137 (*d*): A person who spreads, publishes, exhibits or puts up or takes any step to spread, exhibit in public or put up any writing or picture in which is found any utterance in an insulting form in regard to any group of the population or in regard to any persons belonging to such a group of the population . . . commits an offence if he knows or has serious reason to presume that in the writing or picture such utterance is to be found. When France was free there was a law of libel in relation to defamatory statements made against the members of *une collectivite*. In the Civil Court of Nevers, on the 14th May, 1923, members of the Catholic clergy who had been libelled, sued and recovered damages, and it was said that, although the libel had been directed against the collectivite, each of the members of which it was composed was affected. Chapter 23 of the Norwegian Penal Code, Article 246, makes criminal libel equally applicable to defamation of all collective groups as to individuals, and in particular, to religious communities. The maximum penalty is six months' imprisonment. The 1936 Constitution of the U.S.S.R. contains the following articles:—Article 123: The equality of the rights of all citizens of the U.S.S.R. in all fields of economic, State, cultural, social and political life is an irrevocable law. Any direct or indirect infringement of these rights of privileges due to race or nationality as well as any propagation of racial or national discrimination or hatred or contempt is punishable by law. N.B.—The penal code of the Russian Socialist Federated Soviet Republics, as published in a Foreign Office pamphlet of July, 1934, contains the following article; Collection of Laws, No. 49, Act 330: Propaganda or agitation intended to arouse racial or religious enmity or discord, or the dissemination, preparation or possession of literature of such a character entails deprivation of liberty for a period not exceeding two years. Where such offences are committed during a state of war or on the occasion of mass disturbances they entail deprivation of liberty for a period not less than two years with confiscation of property in whole or in part, provided that in cases where there are aggravating circumstances of a particularly serious character the penalty shall be increased to the supreme measure of social defence; death by shooting with confiscation of property. In the State of Manitoba in the Dominion of Canada the Libel Act was, in 1934, amended to read as follows: "The repeated publication of a libel against any race or likely to expose persons belonging to such race or professing such creed to hatred, contempt or ridicule shall, without prejudice to any other recourse, entitle any person belonging to such race or professing such creed, to sue for damages and for an injunction to prevent the continuation and circulation of such libel or any libel of a similar character; and the Court of King's Bench or the judge thereof is hereby empowered to entertain such action. Further, such action may be taken against any person, firm or corporation directly or indirectly responsible for the authorship publication or circulation of such libel." Our correspondent adds that a law relating to racial hatred or discrimination has recently been passed in Sweden. These laws are unmistakable evidence of an awakening of the world's conscience to the deadly dangers that nowadays threaten the existence of democracy.

Recent Decision.

In *Port of London Authority* v. *Essex Rivers Catchment Board* on 18th April (*The Times*, 19th April), a Divisional Court (HUMPHREYS, OLIVER and STABLE, JJ.) held that where certain premises in respect of which the Port of London Authority were liable to pay drainage rates had at no material time been assessed under Sched. A for income tax, the respondents were bound in law to make a fresh determination of the annual value and to serve notice of their decision on the appellants before making the drainage rates for the year beginning 1st April, 1943, and that the rates which had been made were bad in law. The last previous occasions on which the annual value had been determined for drainage rate purposes were in 1937 and again in 1939, when a small part of the premises was taken out of the list.

A Conveyancer's Diary.

Testamentary Annuities again.

Re Hill [1944] W.N. 112, a decision of the Court of Appeal, revives the question how personal representatives should deal with testamentary annuities where the income of the estate, or of the portion of the estate which is applicable, is not sufficient to provide them. It would be premature to treat of this matter fully until the case comes into the Law Reports; but, as reported in the *Weekly Notes*, the decision is apparently important enough to call for an immediate word of caution. I think that it had been fairly generally assumed, since the decision of Simonds, J., in *Re Cox* [1938] Ch. 556, that where the available income is not enough to provide the annuities (if there are two or more of them) the correct course is to value the annuities in any event. If the estate is big enough to provide the total of the valuations, each annuitant would get the valuation of his annuity; if it is not enough, the necessary abatement would be calculated by reference to the valuations. It now appears from *Re Hill*, that this supposed rule is not a rule at all. In that case the court had to deal with three annuitants, two of whom were well over sixty years old, and the third was fifty-nine. There was evidence that if all the income of the estate were applied to the keeping down of those annuities and the balance of each annuity were made up each year out of corpus, there would be enough capital to last for at least forty-four years. Then there was no practical risk that the capital would be exhausted while any of the annuities were still payable. We have not got figures showing how much would have been left for the residuary legatees if the method of *Re Cox* had been adopted, but it should not be assumed that they would necessarily have been better off, all in all, if the annuities were made up out of capital. Even assuming that there was a certain prospect that a good deal of the estate would be left at the death of the last annuitant, one has to bear in mind that by the valuation method his residuary legatees would get at once anything left after paying off the annuitants, whereas under the other system their actual enjoyment of the gift might well be put off for twenty or twenty-five years.

In *Re Hill* the trustees were directed that their proper course was not to have a valuation but to make up the annuities out of capital; the Court of Appeal is reported to have remarked that *Re Cottrell* [1910] 1 Ch. 402 "did not go so far as to lay down that the rule (as to valuation) was of universal application." As *Re Cottrell* was the decision on which this whole line of cases has been founded, the foregoing statement obviously makes a great difference to the way in which the generality of personal representatives should in future approach these matters. The report of *Re Hill*, so far available, does not explain the whole position with the detail that will no doubt appear from the full report, but the effect of the case seems to be that personal representatives have now got to choose whether to use the valuation method or the method of "nibbling" at capital, instead of feeling bound to follow *Re Cottrell* in every such case. Presumably, more of these cases will now come to the court: the choice before personal representatives is not an easy one and they may well be found fairly often asking for directions.

I shall revert to this subject later; in the meantime it should be noted that cases of this class fall to be treated as matters of difficulty.

Notices under the Law of Property Act.

At present there are rather more than usual difficulties over the service of the notices which are requisite for the purposes of the law of property. The section which is the most important for this purpose is L.P.A., s. 196. It does not apply to "notices served in proceedings in the court" (subs. (6)). With this exception the provisions of the first four subsections are all made applicable to "any notice required or authorised by this Act to be served," and by subs. (5) the same rules are also to "extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears." Thus, s. 196 would not apply to notices under any other statute unless the statute creates a settlement as defined in the Settled Land Act, 1925 (see the definitions of "instrument" and "settlement" contained in s. 205 (1) (viii) and (xxvi)). They would, on the other hand, apply to notices requisite under a contract for the sale of land executed since 1925 or under a lease executed since that year.

The substantive subsections are four. By subs. (1) all notices within the section are to be in writing. Subsection (2) deals with cases where the person who is to be served is a lessee or mortgagor. In these cases it is sufficient service if the notice is addressed not to A B by name, but to "the lessee" or "the mortgagor" or "generally to the persons interested, without any name," and in the last instance it is not to matter if any person to be affected by the notice is absent, under disability, unborn or unascertained. The next relevant provision is contained in part of subs. (3) and is as to the mode of service on a lessee or mortgagor, the same classes of person as are dealt with in subs. (2). In these cases the notice is sufficiently served if it is affixed or left for the lessee or mortgagor on the land or

any house or building comprised in the lease or mortgage. In the case of a mining lease it is enough to leave the notice for the lessee at the office or counting house of the mine.

The other provisions are contained in the rest of subs. (3) and in subs. (4). They relate to notices to be served on "the lessee, lessor, mortgagee, mortgagor or other person to be served." In such cases it is sufficient service if the notice is (*a*) left at the last-known place of abode or business in the United Kingdom of the person to be served, or (*b*) sent by post in a registered letter addressed to such person at such address as aforesaid, provided that the letter is not returned through the post office undelivered. In this case the time of service is that at which the letter would in the ordinary course be delivered. It is to be noted that in this case also it is enough to address the letter to "the lessee" or "the mortgagor" without giving the name, but that it is only in these two instances that the section makes the name unnecessary (subs. (2)). It is also to be noted that in no case does the section provide that it shall be good service to leave the notice at the place of business of the person who has been or is the addressee's agent in relation to the premises or to post it addressed in that way. The parties can make such an arrangement if they so desire, but it is not provided for them by the Act.

Landlord and Tenant Notebook.

Undertaking not to determine Tenancy—II.

I CONCLUDED my first article surveying authorities in which the effect of a landlord's promise not to give notice to quit has been in issue with a discussion of *Re King's Leasehold Estates, ex parte East London Rly. Co.* (1873), 16 Ch. D. 521, in which Lord Eldon's judgments in *Browne* v. *Warner* (1807), 14 Ves. 156, 409, were treated as deciding that a tenant in such a case had an equitable interest. Before discussing subsequent authorities, it may be convenient to refer to the passing of the Real Property Act, 1845, s. 3 of which enacted that a lease required by law to be in writing made after 1st October, 1845, should be void at law unless made by deed, and to *Parker* v. *Taswell* (1858), 2 De G. & J. 559. This case concerned an agreement not under seal by which a land agent agreed to let, and two farmers to take for a term of ten years certain, farms occupied by them, and its importance for present purposes lies in the fact that Lord Chelmsford said (*obiter*, for the agent had not been authorised in writing, nor had he signed as agent) that though the words were words of present demise, the instrument could, despite R.P.A., 1845, s. 3, be treated as an agreement for a lease; "void at law" did not mean "void to all intents and purposes."

The next of the cases in which the undertaking has figured is *Wood* v. *Beard* (1876), 2 Ex. D. 30. The agreement here was for a yearly rent, payable quarterly, the landlord agreeing to "let the said A J B [defendant in the action] remain as tenant as long as he, the said A J B keeps his rent paid and he, the said J W, has power to let the said premises. Also the said J W agrees not to raise or increase the rental of the said house and premises during the tenancy." Notice to quit was given by devisees of the landlord, plaintiffs in the action, which was for possession.

Cleasby, B., held that the plaintiff must succeed because (i) R.P.A., 1845, s. 3, had disposed of *Browne* v. *Warner*; (ii) the document before him, unlike the document in that case, did not contemplate a lease, and (iii) *Re King's Leaseholds* was distinguishable as there was no "so long as the lessor has power to let" in that case, and these words introduced uncertainty, making it impossible to give effect to the undertaking; no particular estate was conferred.

So *Wood* v. *Beard* is a set-back to tenants seeking to enforce such undertakings, and the same applies to the next case, *Cheshire Lines Committee* v. *Lewis & Co.* (1880), 50 L.J.C.P. 121. The facts of this case bear some resemblance to those of *G.N.R.* v. *Arnold*, for the plaintiffs let premises to the defendant on a weekly tenancy—indeed there was express provision that a week's notice should determine it—but at the same time their agent wrote a letter in which he said: "You may have the premises as per agreement until the railway company require to pull them down." When notice to quit had been given, admittedly without any intent to demolish, the defendants relied on *Browne* v. *Warner* and *Re King's Leaseholds*. The points made in the various judgments delivered on appeal were (i) the letter expressed a merely honourable statement of intention, and it was absurd that the company would have to pull down the premises in order to obtain possession; (ii) lack of a deed made it impossible to enforce the undertaking as part of a lease (R.P.A., 1845); (iii) the undertaking was repugnant to a weekly tenancy; and (iv) the instrument being a demise *in praesenti* could not be enforced as an agreement for a lease.

On the first of these points, it will be observed that Rowlatt, J.'s treatment of the railway company's letter in *G.N.R.* v. *Arnold* as part of the bargain, and not a mere honourable expression of intention, was not adversely criticised by the Court of Appeal in *Lace* v. *Chantler*; indeed, the letter was considered the only possible justification for the decision. As to the *reductio ad absurdum*, if the tenancy had been construed as a tenancy for life with a landlord's power to determine, the principle applied in *Johnson* v. *Edgware and Highgate Rly. Co.* (1866), 35 Beav. 480, could have been brought into play; a landlord's option to determine for a specified purpose may not be exercised unless the landlord intends to carry out that purpose. The other grounds cannot be reconciled with the decision of Lord Chelmsford in *Parker* v. *Taswell*.

I now come to the important decision in *Zimbler* v. *Abrahams* [1903] 1 K.B. 577 (C.A.). In October, 1896, the then agent for the owners of a house belonging to the plaintiffs gave the defendant who had occupied it as a weekly tenant, a document running: "I the undersigned . . . have let to Mr. Abrahams the house situate at . . . at a weekly rental of 23s., and I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return him the £6 he has paid me on taking possession of the house." In September, 1901, the plaintiffs gave the defendant notice to quit (presumably a week's notice) and took proceedings under Order XIV; the action was tried as a short cause and judgment given for the defendant on the ground that he had not broken the condition as to payment of rent; the plaintiffs had apparently alleged that he had. But in the Court of Appeal the question of the validity and effect of the document were gone into, the plaintiffs contending that owing to the absence of a seal only a weekly tenancy had been brought into being. The first argument advanced for the defence was that the document was nothing but a memorandum of a past agreement; but in the alternative it was urged that if it was an actual lease, specific performance could be ordered, for the lease was void in law only and good as an agreement.

Giving judgment, Vaughan Williams, L.J., held that the document attempted, but failed, to create an immediate interest in land (R.P.A., 1845); but that in it could be found an agreement by the grantor not to take any steps, during the life of the grantee, to enforce his right to possession; that it could accordingly be treated as an agreement to let the premises (*Browne* v. *Warner*); and that specific performance could be decreed (*Parker* v. *Taswell*). In the result judgment was given for the plaintiffs subject to the defendant claiming specific performance within fourteen days and satisfying all arrears of rent.

I think that if the attention of Rowlatt, J., had been drawn to this authority when he tried *G.N.R.* v. *Arnold*, he would have troubled less about Sheppard's Touchstone and Bacon's Abridgement, and would not have exposed himself to the criticism of Macnaghten, L.J., in *Lace* v. *Chantler*: "arriving at his conclusion 'by hook or by crook' rather than upon legal principles." Instead of pointing out that the parties could have attained their object by a lease for 999 years determinable on the cessation of hostilities (tantamount to observing "if we had eggs we could have bacon and eggs if we had bacon") the learned judge might have held that they had agreed to grant the defendant a lease for the life of the latter subject to a like power to determine.

The actual judgment in *Lace* v. *Chantler*, that of Lord Greene, M.R., distinguished (if only just) *G.N.R.* v. *Arnold* and *Zimbler* v. *Abrahams*, the difference being that in those cases there was something which could be construed as an agreement for a long term or for life, while in *Lace* v. *Chantler*, all that the tenant could rely on were the words "furnished for duration" in a rent-book. *Zimbler* v. *Abrahams* came in for less adverse criticism than did *G.N.R.* v. *Arnold*; but if the learned Master of the Rolls considered the construction placed by Rowlatt, J., on the agreement in the earlier case "rather strained" he also observed of the later one that "of what there should be specific performance is left very obscure." However, Lord Chelmsford's judgment or dictum in *Parker* v. *Taswell* was not impugned, and in the result I think it can be contended that whenever an agreement to let "for the duration" includes an express or implied undertaking not to give notice to quit before the cessation of hostilities, the agreement is enforceable as an agreement for a lease and the habendum is not too vague to make such relief impossible. Those arguing to the contrary can make the following points: (i) the proceedings in *Browne* v. *Warner* were interlocutory only; (ii) Malins, V.C.'s statement in *Re King's Leasehold Estates* was not necessary for the judgment; (iii) the same applies to Lord Chelmsford's statement in *Parker* v. *Taswell*; (iv) which was not applied in *Wood* v. *Beard*, or in *Cheshire Lines Committee* v. *Lewis & Co.*

At the annual general meeting of the Legal & General Assurance Society, Limited, to be held on the 2nd May next, the directors will recommend payment of a final dividend for the year 1943 at the rate of two shillings per share, less income tax, payable on the 1st July, 1944 (the same rate as last year).

The quarterly meeting of the Lawyers' Prayer Union will be held on Monday, 8th May, at 6 p.m., in the Council Room of The Law Society, preceded by half-an-hour for tea. The speaker on this occasion will be Air Commodore P. J. Wiseman, whose subject will be "Presenting the Evidence."

To-day and Yesterday.

LEGAL CALENDAR.

April 24.—Patrick Fleming was the son of an Athlone smallholder, who scratched a living from a potato patch and whose chickens, geese and pigs shared the same roof and the same room with himself and his nine children. The boy had plenty of impudence and was taken into the household first of the Countess of Kildare, and then of the Earl of Antrim. In both places he misbehaved himself and when he was discharged by the Earl, he robbed him of £200. After six years with a gang of housebreakers in Dublin, he turned highwayman, haunting the Bog of Allen and claiming to be absolute lord of the road. He terrorised travellers with his utter ruthlessness and brutality. Persons of quality he addressed in their own style, telling them he was as well bred as they and they must subscribe towards maintaining him according to his rank and dignity. Once he escaped out of the county gaol at Cork, continuing his career for some years more, murdering or mutilating many of his victims. At last he was betrayed with fourteen of his gang. The landlord of a house where they used to drink informed the sheriff when they would be there and took the precaution to wet their firearms. Fleming was hanged in Dublin on the 24th April, 1650.

April 25.—Tom Jones was the son of a Newcastle clothier, and followed his father's trade till he was twenty-two. By that time an irregular way of life had run him into debt and he decided to take to the road. Having stolen from his father £80 and a good horse, he rode off to Staffordshire where his first effort, holding up a coach full of ladies and gentlemen, provided a good haul. After experiencing the usual ups and downs of a highwayman's life, he was arrested in Cornwall for robbing a farmer's wife and afterwards ravishing her. He was only thirty-two when he was hanged at Launceston on the 25th April, 1702.

April 26.—In September, 1747, a smuggler named Perin, formerly a Chichester carpenter till a stroke of palsy deprived him of the use of his right hand, loaded a boat in France with a cargo of brandy and tea, to run it on the coast of Sussex. She was intercepted, however, by a Revenue cutter, though her crew escaped, and the goods were taken to the Poole Custom House. Early in the following month the whole gang of smugglers determined to break in and recover the stuff, and about 11 o'clock one night, thirty of them attacked the place, forced it open and got away with their spoils, eventually making an equal division among themselves. A reward was offered for their arrest and consequently two of them gave information which led to the apprehension of four others, including Perin. They were tried at the Old Bailey, and on the 26th April, 1749, three of them were hanged at Tyburn. Perin travelled thither in a mourning coach, the other two, Kingsmill and Fairall, in a cart with an escort of Horse and Foot Guards.

April 27.—One of the illegal trades in eighteenth-century London was known as "crimping." It consisted in getting hold of unsuspecting youths, preferably from the country, decoying them to some public-house, where they were plied with drink till, fired by hyperbolical descriptions of the fabulous wealth of Asia, they agreed to enter the East India Company's fighting service and, finally, keeping them under lock and key till they could be shipped overseas. John Young was one of these pseudo recruiting officers, but he met his match when he shut up Henry Soppet, a sailor, in a house in Chancery Lane. The prisoner, when he recovered his senses, made such an outcry that he had to be released. As soon as he was at liberty he gave information about his captor, who was tried at the Guildhall on the 27th April, 1757. Though Young pleaded guilty and took the line of simulating a whining contrition, he was sentenced to a year's imprisonment in Newgate and ordered to find security for his good behaviour for two years more.

April 28.—Early one morning Mr. Lloyd, an eminent city merchant, of Devonshire Square, Bishopsgate Street, awoke to find a stranger by his bed threatening him with a pistol and demanding the keys of his escritoire. The intruder warned him not to make a noise, as he was leaving a guard to dispatch him if he shouted or moved. Subsequently Mr. Lloyd had cause to suspect that Robert Tilling, his coachman, was the confederate who had kept in the background. The man was arrested, confessed, and was hanged at Tyburn on the 28th April, 1760.

April 29.—On the 29th April, 1776, "Mr. Axtell was brought into the Court of King's Bench to receive judgment for printing and publishing a pamphlet called 'The Crisis.' Sir Richard Aston read several extracts from the same, which he declared were grossly libellous and deserving of punishment. However, an affidavit being read in which the prisoner declared he was not worth £5, the court passed sentence of but three months' imprisonment upon him."

April 30.—In 1787 Lord George Gordon, the indefatigable agitator who had delivered London over to mob rule in 1780 and got off unpunished, was again in trouble and prosecuted for libel in respect of some over-violent criticisms of British justice and two defamatory paragraphs on the Queen of France. During the preliminary proceedings he made several appearances in the Court of King's Bench. On the 30th April he came in and took his seat among the King's Counsel and after the ordinary business of the court was concluded he rose and stated that he found by the books that in all cases where informations were brought on the part of the Crown the officers of the Crown only could proceed, whereas in this case no King's Counsel had appeared. Accordingly, he asked whether the counsel who moved against him could act by delegation of the Attorney-General. Mr. Justice Buller answered that they certainly could. When the trial came on in June the accused was convicted, and in the following January he was condemned to five years' imprisonment.

The Uses of Obscurity.

During the hearing of a recent appeal in the House of Lords an argument arising from the obscurity of a term in a statute drew from the Lord Chancellor the observation that "obscurity has its compensations." From the Lords down to the county courts the unintelligibility of Acts of Parliament is a never-failing topic of discussion. MacKinnon, L.J., has referred to a piece of legislation as following the best traditions of obscurity. Judge Alchin once stated that after reading a particular paragraph in another Act sixteen times he began to grasp its real meaning. The late Lord Hewart complained of like difficulties "due sometimes to ill-considered amendments, sometimes to the ambiguous use of terms, sometimes to a passion for 'simplifying' the law by reiterating old expressions with new meanings." He used to tell of a Law Officer of the Crown who once admitted that a certain provision was obscurely drafted so as to get it past the House of Commons committee. The complaint is of old standing. "If," wrote Coke, C.J., "Acts of Parliament were after the old fashion penned, and by such only as perfectly knew what the Common Law was before the making of any Act of Parliament concerning that matter . . . then . . . the learned should not so often . . . perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences and provisoes . . "

Obituary.

Mr. A. G. Roby, K.C.

Mr. Arthur Godfrey Roby, K.C., died on Saturday, 15th April, aged eighty-one. He was called by the Inner Temple in 1887 and took silk in 1919.

Mr. J. E. Archer.

Mr. Joseph Ernest Archer, solicitor, of Messrs. Dickson, Archer & Thorp, solicitors, of Alnwick, died recently aged sixty-two. He was admitted in 1904.

Mr. E. A. Bell.

Mr. Edward Albert Bell, solicitor, and late senior partner of Messrs. Carter & Bell, solicitors, of Idol Lane, E.C., died on Monday, 17th April, aged seventy-eight. He was admitted in 1887 and for many years was an opponent in litigation of Horatio Bottomley. He wrote a book on Bottomley entitled "The Gentle Art of Exploiting Gullibility." Other publications of his included legal papers and a book of reminiscences.

Mr. R. H. Bennett.

Mr. Ronald Henry Bennett, solicitor, of Leicester, died recently aged thirty-seven. He was admitted in 1929.

Mr. L. Farnfield.

Mr. Leslie Farnfield, solicitor, of Messrs. J. A. & H. E. Farnfield, solicitors, of Lloyd's Avenue, E.C.3, died on Monday, 3rd April, aged fifty-seven. He was admitted in 1908.

Mr. E. Musgrave.

Mr. Edward Musgrave, solicitor, and senior partner of Messrs. Waugh & Musgrave, solicitors, of Cockermouth, died recently aged eighty-eight. He was admitted in 1878. For twenty-five years he was Clerk to the Cockermouth Justices.

Mr. T. H. Walford.

Mr. Thomas Henry Walford, solicitor, of Birmingham, died recently. He was admitted in 1892.

H.M. Land Registry.

Office Copies of Documents.

The Chief Land Registrar calls attention to the fact that in a very large proportion of applications for office copies of registers and other documents the fees do not accompany the applications and he therefore desires to notify solicitors that in view of the heavy cost of collecting the small amounts involved he may be unable to continue to issue office copies at the specially reduced rates unless the fees accompany the applications. The full schedule of specially reduced charges is printed on the convenient form of application for office copies A.44 (obtainable from H.M. Stationery Office, Kingsway, W.C.2). These fees may be paid by adhesive Land Registry stamps, the use of which assists the Registry.

The Chief Land Registrar further desires to point out that owing to the present heavy demand on the part of the fighting services for certain photographic materials the supply to the Land Registry has recently been curtailed to a considerable extent. Solicitors are therefore urged not to apply at present for office copies if they can conveniently adopt other means of satisfying their needs.

Our County Court Letter.

Launderers' Liability for Loss.

In *Smith* v. *Romford Steam Laundry, Ltd.*, at Ilford County Court, the claim was for damages in respect of the loss of a bedspread. The plaintiff's case was that the bedspread had cost £2 10s. in 1939. The defendants admitted having lost the bedspread, but contended that they were only liable to the plaintiff to the amount of 5s. 10d. Under the regulations printed in the laundry-book (which were general throughout the trade) the laundry company's liability was limited to twenty times the charge for washing. His Honour Judge Trevor Hunter, K.C., held that the regulations referred only to losses by fire or negligence. The action was not based on either of those grounds, but on the implied contract by the launderer that goods delivered to him, for work to be done, would be returned by him. The limitation of liability did not apply to cases in which the launderer had committed a breach of contract. The present-day value of the bedspread was £1. Judgment was therefore given for the plaintiff for £1, with costs.

Possession of Rooms in Rectory.

In *Mitchell* v. *White*, at Worcester County Court, the claim was for possession of furnished rooms at Salwarpe Rectory. A preliminary question arose, viz., whether the plaintiff could sue under a power of attorney from her husband, who was a chaplain in the Navy. His ship had been sunk, but a survivor had seen the chaplain on a raft. His wife was still receiving money from the living of Salwarpe, and the Admiralty had stated that there was no question yet of a pension. No presumption of death would arise for seven years. The power of attorney had therefore not been revoked. His Honour Judge Roope Reeve, K.C., held that the action was maintainable. The plaintiff's case was that the rooms were let at £2 2s. a week. Notice to quit was given on the 1st September, 1943. About 35 per cent. of the total rent was in respect of furniture. The defendant's case was that he had not signed the inventory of furniture, as it was not worth listing. The amount of rent attributable to the furniture was 5s. a week. The rooms were thus let unfurnished. Admittedly the Court of Appeal had held in *Brandon* v. *Grundy* (1943), 2 All E.R. 208, that the Rent Acts did not apply to parsonage houses. Nevertheless, it was unreasonable to dispossess one tenant for the mere reason of re-letting to another. His Honour held that a substantial amount of furniture was let to the defendant. An order was made for possession in twenty-eight days and judgment was given for rent and rates due from the expiry of the notice to quit.

Decisions under the Workmen's Compensation Acts.

Incapacity from Hand Injury.

In *Mills* v. *Montague Meyer, Ltd.*, at Wantage County Court, an application was made for a review of compensation payable in respect of an accident which occurred on the 22nd August, 1941. The applicant had then been employed as a sawyer, and had lost the third and fourth fingers of his left hand while working a circular saw. In December, 1941, he resumed work, but on the 27th January, 1942, he met with a second accident. Owing to his poor grip, some timber fell on his right leg, which was broken in three places. Full compensation was paid until February, 1943, when it was reduced on the ground that incapacity was only partial. The applicant's medical evidence was that his loss of grip, coupled with his inability to walk or stand, prevented him doing any work but that of a night watchman or time-keeper. There were, however, no vacancies for these. The respondents' medical evidence was that the applicant had recovered his grip. Although he could not carry heavy weights, he was not totally incapacitated. Moreover he was still registered at the Employment Exchange as a sawyer. His Honour Judge Donald Hurst held that the applicant was not an odd lot in the labour market. Such labour as the applicant was able to perform was not unmarketable. The application was accordingly dismissed, with costs.

The Definition of Total Incapacity.

In *Preece* v. *S.W.S. Electric Power Supply Co., Ltd.*, at Kidderminster County Court, the application was for a review of compensation payable by reason of an accident on the 18th May, 1942. On that date a pole fell on to the applicant, who sustained an injury to his spine. He was totally incapacitated until the 18th September, 1942, but he subsequently did light work until the 17th March, 1943, when he was stopped by the respondents. Full compensation was paid until the 23rd October, 1943, when it was reduced to 15s. per week on the ground that the applicant was only partially incapacitated. He contended, however, that he was still totally incapacitated. The medical evidence on each side was that the injury was permanent, and that the applicant could not resume his pre-accident work. The respondents contended, however, that there was now work available for the applicant, even in his damaged condition. His Honour Judge Roope Reeve, K.C., upheld the latter contention. Although the applicant was entitled to sympathy, he had failed to prove total incapacity. The application was dismissed, with costs.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Managing Director's Illness.

Q. In a service agreement between a limited company (builders and contractors) and their managing director for a term of years at a salary of £850, and expenses, no provision is made for the breakdown in health of the managing director. The managing director's health during the term of service has become gravely impaired by serious heart trouble, and his specialist cannot advise him to undertake any service involving regular attendance. It is clear that the managing director will be unable to discharge fully the duties of his service under the agreement. If he is unwilling to resign or accept a reduced salary, what remedy have the company, who are faced with the problem of securing additional help when they can in order to have work done which the managing director cannot for health reasons now undertake. A reference to cases bearing on the point will be appreciated.

A. According to *obiter dicta* of Willes, J., in *Harmer* v. *Cornelius*, 5 C.B. (N.S.) 236, the company can terminate the contract. Compare *O'Grady* v. *M. Saper, Ltd.* [1940] 2 K.B. 469.

Seal of Company.

Q. A company's articles (following the 1929 Act) provide that the seal shall be affixed in the presence of at least one director and of the secretary. One of the directors is also the secretary of the company. The company maintains that his signature alone, with his description appended (director and secretary) to the affixing of the seal is an adequate sealing of a conveyance. Is this correct, and is there any authority therefor?

A. The wording of the article implies that the signatures of two individuals are necessary. The company's contention is incorrect.

Whether an Infant Married Woman can be an Executor or Administrator.

Q. Am I right in thinking that a girl under twenty-one, who is a married woman, can act as an executor or administrator in spite of her age, in view of the fact that although the Wills Act, 1837, precludes a girl under twenty-one from making a valid will, the Married Women's Property Act, 1882, allows a married woman under twenty-one to make a valid will?

A. We do not agree. Where an infant is or becomes sole executor, administration with the will annexed is granted to his guardian (or such other person as the court thinks fit) until the infant attains the age of twenty-one years, at which time, but not before, probate may be granted to him. The appointment by a testator of an infant as executor gives the infant no interest in the deceased's property and does not constitute him a personal representative for any purpose until probate is granted to him on attaining the age of twenty-one (s. 165 of Judicature Act, 1925). Administration is not granted to an infant (*Re Manuel*, 13 Jur. 664). He could not execute the necessary bond. The Wills Act, 1837, s. 7, prevents a minor from making a will (save in the exceptional case of a soldier, etc., on service). The Married Women's Property Act, 1882, s. 1 (1), merely enables a married woman to make a will in the same manner as if she were a *feme sole*. But an infant *feme sole* cannot make a will.

Apportionment of Income.

Q. A B, tenant in tail of settled funds, being the investments arising from the sale of a freehold estate, died in 1942, and C D succeeded him as tenant in tail. On the death of A B the then current income on the settled funds was apportioned as between A B's executors to date of his death, and C D. The trustees of the settlement in January, 1944, sold out 4 per cent. second preference stock of L. & N.E. Railway and 4 per cent. preference stock of L.M. & S. Railway. The final dividend on these stocks for the year ending 31st December, 1943, was not paid until March, 1944, and the purchasers of the stock claim this dividend, as the stock on the date of sale was not quoted ex dividend. Please advise if C D is entitled to be paid out of the proceeds of sale of the stock this dividend. The stock was realised to pay the estate duty assessed on the death of A B.

A. The opinion is given that there should be no payment to C D. What may be called the leading case is *Bulkeley* v. *Stephens* [1896] 2 Ch. 241, when Stirling, J., held that the Apportionment Act, 1870, applies only to dividends actually received. *In re Winterstoke's Will Trusts* [1938] Ch. 158, Clauson, J., held in circumstances somewhat similar to those in the query, that the estate of a deceased life owner ought to have an allowance out of the proceeds of sale, but he would not hold that trustees committed a breach of trust if they paid the whole proceeds of sale to the remaindermen. *In re Firth's Estate* [1938] Ch. 517, Farwell, J., refused to follow Clauson, J.'s decision, and *In re Henderson, Public Trustee* v. *Reddie* [1940] Ch. 368, Morton, J., after reviewing the other cases, held in effect that there should be an apportionment of dividends in all cases, *except* where investment was sold *cum* dividend.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS JOURNAL.*]*

Salvage of Old Papers, Books, etc.

Sir,—During the war appeals have been made to solicitors to turn out for salvage any old papers which need no longer be retained in the interests of their clients, and many solicitors have responded well.

The collections of waste paper have, however, recently fallen below the quantity required for essential purposes, and it is accordingly necessary to take every possible step to fill the gap. I need hardly say that waste paper is repulped into paper and board, which are essential raw materials for the manufacture and packing of munitions of many kinds and also for civilian needs.

I appeal, therefore, to every solicitor to turn out for salvage all old documents and papers of every kind, including books and magazines, which have served their original purpose and are unlikely to be required again. Solicitors will know from experience which should be retained and which can be disposed of with reasonable safety.

It is recognised that the sorting out of papers may be a difficult task, especially with the shortage of staff, but all who undertake it (during the hours of firewatching or otherwise) will have the satisfaction of not only clearing their offices but directly helping the prosecution of the war.

Any inquiries on the matter may be addressed to the Directorate of Salvage and Recovery, Berkeley Court, Glentworth Street, London, N.W.1.

H. G. JUDD,
Director of Salvage and Recovery (General),
Ministry of Supply.

London, N.W.1.
13th April.

Plan attached to Will.

Sir,—In your issue of 8th April (*ante*, p. 128) an inquiry is made whether a plan can be attached to a will for reference.

We recently acted in the proof of a will to which a plan was attached and referred to in the will, we having, on making the will, ascertained from the Probate Registry that such a will would be accepted for proof.

Cheltenham. BUBB & CO.
21st April.

Review.

Wheaton's International Law. Vol. 2—War. Seventh English Edition. By A. BERRIEDALE KEITH, D.C.L., D.Litt., Hon. LL.D., of the Inner Temple, Barrister-at-Law. 1944. Royal 8vo. pp. xxvii and (with Index) 672. London: Stevens and Sons, Ltd. 50s. net.

Recent events have proved, if proof were needed, that though disorder may triumph for a time, decency and law between nations are bound to reassert themselves, even in war. Though there is a school of thought which holds that war, being essentially lawless, cannot be made subject to law, and that its horrors cannot in any way be mitigated, the evidence to the contrary, as this volume proves, is overwhelming. Wheaton, himself, as Professor Keith describes him in the Preface to the present edition of the work, was a diplomat of the highest eminence, and the two first editions, published in 1836 in Philadelphia and London respectively, were the fruits both of his learning and of his ripe experience. The fifth edition was published as long ago as 1916, and all that has happened since then in the development of the international laws of war has been skilfully interwoven with the old material so as to present a unified and up-to-date treatment of the subject. The successful assertion by the British Government of the international laws of war in the "Altmark" incident in February, 1940, is shown to have been approved by international lawyers, and the qualified neutrality of the U.S.A. until 7th December, 1941, the peculiar "neutral" position of Marshal Petain's government, the "neutrality" of Egypt, the recent representations to Sweden concerning the supply of war material to Germany, the passage of volunteers through and from the United Kingdom to aid both sides in the Spanish civil war (1936–38) are all the subject of comment in the chapter on Neutrals. On the subject of air warfare and bombing Dr. Keith takes the view that "the truth is that in effect there is no limit to bombing in war, and no limit is likely to be accepted or adhered to in war." Whether this view will continue to be valid in view of the rapid scientific development of precision bombing remains to be seen. There is evidence, of which inhabitants of this country do not need to be reminded, that mere "terror" bombing very often has the contrary effect to that which is intended, and is both a wasteful, and a mistaken policy. The publication of this work is an event in the history of international law, and it provides absorbing reading not merely for the student of law, but for all who seek to understand the trend of events.

Books Received.

The Diagnosis and Treatment of Delinquency. By EDWARD GLOVER, M.D. 1944. pp. 32. London: The Institute for the Scientific Treatment of Delinquency. 1s. net.

The Juridical Review. Vol. LVI. No. 1. April, 1944. Edinburgh: W. Green & Son, Ltd.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1943 Vol., Part 16. 1943–44 Vol., Part 1. London: Hamish Hamilton (Law Books), Ltd.

Burke's Encyclopædia of War Damage and Compensation. Edited by HAROLD PARRISH, Barrister-at-Law. Supplemental Parts 14 and 15. London: Hamish Hamilton (Law Books), Ltd.

Valuation for War Damage. By RONALD COLLIER, F.S.I., F.A.I. 1944. Royal 8vo. pp. vii and (with Index) 276. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

How to Reform Parliament. By ROBERT S. W. POLLARD, Solicitor. 1944. pp. 48. London: The Forum Press. 2s. net.

Rules and Orders.

S.R. & O., 1944, No. 485/L.19.

SUPREME COURT, ENGLAND.

PROCEDURE:—MATRIMONIAL CAUSES.

THE MATRIMONIAL CAUSES (BURY ST. EDMUNDS) RULES, 1944.
DATED APRIL 24, 1944.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred on my by section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. These Rules may be cited as "The Matrimonial Causes (Bury St. Edmunds) Rules, 1944," and shall have effect as part of the Matrimonial Causes Rules, 1944.

2. Matrimonial causes and any matters arising out of or connected therewith may be heard and determined at Assizes held at Bury St. Edmunds, and accordingly:—

(*a*) the words "Bury St. Edmunds" shall be inserted after the word "Bristol" in Appendix III of the said Rules;

(*b*) the words "and if the Assize town is Bury St. Edmunds, to the District Registry at Ipswich" shall be inserted after the words "at Lewes" in Rule 32 (6) of the said Rules.

Dated the 24th day of April, 1944.

Simon, C.

We concur.

Caldecote, C.J.
Merriman, P.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

No. 481. **Alien.** Landing and Embarkation Direction, April 17, under Articles 14 and 17 of the Aliens Order, 1920, as subsequently amended, exempting certain persons from the provisions of Arts. 1, 1B and 15 of that Order.

No. 482. **Alien Restriction Direction,** April 17, under Art. 22 (1) of the Aliens Order, 1920, as subsequently amended.

No. 465. **Aliens.** Order in Council, April 17.

E.P. 461–4. (As one publication). **Orders in Council**, April 17, amending the Defence (General) Regulations, 1939:

461. Amending reg. 1A of the Defence (General) Regulations, 1939, and adding reg. 1AA to those regulations.

462. Adding reg. 16C to the Defence (General) Regulations, 1939.

463. Amending reg. 20A of the Defence (General) Regulations 1939.

464. Adding reg. 57D to the Defence (General) Regulations, 1939.

E.P. 391. **Lighting** (Restrictions) (Northern Ireland) Order, March 29.

E.P. 390. Lighting (Restrictions) Order, March 29.

No. 431. **National Health Insurance and Contributory Pensions,** War Occupations Amendment Regulations, April 4.

E.P. 428. **Navigation Order** No. 31, April 8.

No. 369. **Pension.** Personal Injuries (Civilians) Scheme, March 31.

No. 436. **Police.** England and Wales. The Police Regulations, March 23.

No. 437. Police, England and Wales. The Police (Women) Regulations, March 23.

No. 425. **Rating and Valuation Act** (Product of Rates and Precepts) Amendment Rules, April 6.

No. 399. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 4) Order, April 4.

No. 429. Trading with the Enemy (Specified Persons) (Amendment) (No. 5) Order, April 12.

Notes of Cases.

HOUSE OF LORDS.

L.C., Ltd. *v.* G. B. Ollivant, Ltd.

Viscount Simon, L.C., Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright. 3rd April, 1944.

Contract—Sale of business—Price payable out of profits—Method of computation of profits—Whether excess profits tax and National Defence Contribution to be deducted before profits ascertained.

Appeal from a decision of the Court of Appeal.

By an agreement, dated the 27th September, 1933, the appellant company agreed to sell its business to the respondent company. The purchase price was to be paid by eight annual instalments with a maximum limit of £200,000. Clause 4 of the agreement provided that the amount of each instalment should be "a sum equal to one-half the sum which the auditors of the respondent company . . . shall certify to be the profits of such financial year ascertained in accordance with the provisions in that behalf hereinafter contained and such payments being instalments of a capital sum shall be made without any deduction for income tax." The third schedule to the agreement provided under the heading "Method of computing profits" of the respondent company, that "the profits of the respondent company shall be computed by the auditors for the time being of the respondent company and their computation shall be binding on both parties. Subject to any special provisions in this agreement contained the general principles to be adopted by them in making such computations shall be those of ordinary commercial practice but they shall be entitled to make such adjustments as they think appropriate in order to give effect to the principles of the agreement." The appellants took out this summons asking whether in computing their profits the respondents were entitled to deduct any sum payable by them in respect of excess profits tax or National Defence Contribution. The Court of Appeal held, affirming Farwell, J., that the respondents were entitled to make such deductions. The appellants appealed.

LORD THANKERTON said that Lord Greene, M.R., had rightly taken the argument in three steps, viz.: (*a*) did the "principles of ordinary commercial practice" refer to the ordinary commercial practice in ascertaining the profits of a trading company? (*b*) if so, what was the ordinary purpose for which profits of a trading company were computed, and was it for the purpose of ascertaining divisible profits as shown by a profit and loss account? (*c*) if so, did excess profits tax fall to be deducted in drawing up such a profit and loss account? It was not disputed that the last question should be answered in the affirmative. As he read the words, the "general principles of ordinary commercial practice," they directed the application of general principles which were in ordinary commercial use outside of and apart from this particular agreement, but the application of such general principles was to be modified by the express provisions of the agreement. If one looked outside the agreement, these words must surely relate to the ordinary practice of trading companies, and he would have, without difficulty, have come to the conclusion that the practice referred to was the practice of such companies in ascertaining the divisible profits of the company for the purpose of the shareholders, even apart from the indications on this contract, which placed the matter beyond doubt. The suggestion that the parties when making this contract could not have had the excess profits then in mind, did not help the appellants. What either party would have maintained or what agreement might have been made about it was pure speculation and outside the province of a court of construction. He was of opinion that the appeal failed.

LORD RUSSELL OF KILLOWEN and LORD WRIGHT agreed in dismissing the appeal.

VISCOUNT SIMON, L.C., and LORD MACMILLAN delivered dissenting opinions.

COUNSEL: *Pritt*, K.C., and *Scrimgeour*; *Romer*, K.C., *Grant*, K.C., and *W. G. Brown*.

SOLICITORS: *Clifford-Turner & Co.*; *Linklaters & Paines*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

B.A. Collieries, Ltd. *v.* London and North Eastern Railway Company.

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 15th March, 1944.

Mine—Mine owner serves notice of desire to work coal under area of protection—Counter-notice—Coal sterilised—Compensation payable—Basis of assessment—Mines (Working Facilities and Support) Act, 1923 (13 & 14 *Geo. 5, c. 20), s.* 15.

Appeal from a decision of Morton, J. (87 SOL. J. 391).

The plaintiff company were the owners of certain coal mines, and on the 24th January, 1940, they served a notice on the defendants, a railway company, under s. 78 (1) of the Railway Clauses Consolidation Act, 1845, as amended by s. 15 of the Mines (Working Facilities and Support) Act, 1923, of their desire of working coal under the defendant company's works which constituted an "area of protection." On the 30th December, 1940, the railway company served a counter-notice in respect of part of the area which had the effect of sterilising the coal under the part of the area of protection. Thereupon the railway company became liable under s. 78 (4) (as amended) to pay compensation to the plaintiffs "for the loss caused by the specified minerals being left unworked," such compensation being assessed under s. 78A (as amended). If a counter-notice had not been served and the plaintiffs had been free to work the coal, they would have been liable under s. 79A to contribute towards the expenses properly incurred by the railway company in making good any damage caused by such working to the railway or works of the railway company to the extent laid down in the Act. The plaintiffs took out this summons raising questions as to the basis of assessment of the compensation payable to them. Morton, J., held that the liability under s. 79A was to be taken into account in assessing the compensation payable by the railway. The plaintiffs appealed.

LORD GREENE, M.R., reading the judgment of himself and Luxmoore, L.J., said that the railway company contended that, in arriving at the compensation to be paid by it in respect of the specified minerals in its counter-notice, account should be taken of the fact that, if the counter-notice had not been served, the mine owners would have been liable to contribute to the making good of any damage caused by working them. This potential liability made the minerals less valuable in the hands of the mine owners and the arbitrator must accordingly form an estimate of the risk and make an appropriate deduction from the compensation. The mine owner contended that the liability to make contribution only arose where damage had in fact occurred and that the possibility of its occurring was not an element which could be taken into account in fixing the compensation to be paid in respect of the specified minerals. Having regard to the remarkable results which would follow if the railway company were correct, they considered that, if the Legislature had intended these results, it would have said so in express terms. The words of s. 78 (4), namely, "compensation for the losses caused by the specified minerals being left unworked," did not carry the consequences imputed to them by the railway company. Section 79A confirmed the view that the contention of the mine owners was the correct one. According to the language, liability arose only when damage was actually caused. It was highly unlikely that the Legislature would have imposed the task of estimating the future damage without express language to that effect. The effect of mining operations on buildings on the surface was notoriously capricious and impossible to forecast with any certainty. They were driven to the conclusion that the liability to make a contribution came into existence when, and only when, damage occurred, and could not be regarded as having a potential existence before it occurred. The provisions of the Act relating to compensation and those relating to contribution appeared to be quite separate and distinct and the existence of the latter could not be taken as governing the measure of the former. The appeal must be allowed.

MACKINNON, L.J., agreed.

COUNSEL: *Macaskie*, K.C., and *Jopling*; *Sir Walter Monckton*, K.C., *Pascoe Hayward* and *J. Basil Herbert*.

SOLICITORS: *Gregory, Rowcliffe & Co.*; *W. H. Hanscombe*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

R. *v.* Croft.

Lawrence, Lewis and Wrottesley, JJ. 21st January, 1944.

Crime—Murder—Suicide pact—Accessory before fact—Aider and abettor—Direction to jury.

Appeal against a conviction of murder recorded at Winchester Assizes on 14th December, 1943, on the grounds of misdirection in failing to put the possibility of accident and the possibility of manslaughter before the jury, and in saying that the appellant was guilty of murder because the victim of the alleged murder had said that it was the result of an agreement between the appellant and the deceased. The appellant, a married man, had formed an attachment to the deceased when they were serving at the same Royal Air Force station, and after arranging to part, they became too upset to do so, and it was alleged that they arranged to commit suicide together. They sat together in a summer house until late at night and the deceased shot herself in the chest, but failed to kill herself. The accused went to get help, but when just outside he heard another shot and he returned to find that the deceased was dead, having shot herself through the head.

LAWRENCE, J., delivering the judgment of the court, referred to *R. v. Dyson* (1823), 1 Russ. and Ry. 523; *R. v. Alison* (1838), 8 C. & P. 418; *R. v. Jessop* (1887), 16 Cox C.C. 204; *R. v. Stormonth* (1897), 61 J.P. 729; *R. v. Abbott* (1903), 67 J.P. 151; and *R. v. Symonds* (*The Times*, 19th December, 1922) and said that in all those cases the prisoner was present and was charged as an aider and abettor, the distinction between aiders and abettors and accessories before the fact being that aiders and abettors were present and accessories before the fact were absent. Before 1861 it was impossible to have a case in which an accessory before the fact could be so treated if it were a case of suicide, because before that date it was necessary that the principal felon should have been convicted first, and as the felon had already died, he could not be convicted. Therefore all those cases were cases not of accessories before the fact, but of aiders and abettors. In the present case the whole of the judge's summing up was based on the evidence that there was an agreement and he put to the jury that an essential element for them to find was that there was a mutual agreement to commit suicide. Where there was such a mutual agreement, that amounted to such a counselling, procuring, inducing, advising or abetting as constituted the person who agreed an accessory before the fact if he was not there when the other party to the agreement committed suicide ("Russell on Crime," 9th ed., vol. II, p. 1481 *et seq.*). His lordship also referred to *Mancini* v. *Director of Public Prosecutions* (1942), A.C., *per* Lord Simon, L.C., at p. 8, and said that in the present case there was no evidence which could possibly have induced any reasonable jury to take the view that, when the second shot was fired, it was fired by reason of legal provocation which could reduce the crime from murder to manslaughter. Counsel for the appellant had also complained that the summing up did not contain any reference to the possibility of the agreement to commit suicide having been countermanded. The circumstances of the case did not amount and could not have amounted to a clear countermand so as to discharge the appellant from liability to a charge of

murder if that which occurred was the result of what he had done before. The appeal must be dismissed.

COUNSEL: *Humfrey Edmunds; John Maude*, K.C., and *J. Scott Henderson*.

SOLICITORS: *Registrar of Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

The Punishment of War Criminals.

The International Lawyers Group held an open meeting at the Royal Empire Society, Northumberland Avenue, W.C.2, which was addressed by the Czechoslovak Minister of Justice. Dr. Stransky spoke on the punishment of war criminals. This article is a report of Dr. Stransky's speech.

International justice can only be effective as a corollary to properly organised international relations. An international community of States requires three essential elements, viz., disarmament, security and international justice. These three elements were the foundations of the Geneva Protocol. The problem of international justice is closely linked up with the question of the punishment, not only of the actual perpetrators of "war crimes," but of the leaders who instigated and directed from afar the commission of atrocities during war-time.

In *The Times* certain lawyers protested against the very idea of trying persons like Hitler or Himmler, suggesting that they should either be shot or be allowed to "decay in obscurity." This view does not represent the opinion of most legal experts. Informed legal opinion is, on the whole, in favour of condemning these "arch-criminals" by properly constituted legal tribunals. The Moscow declaration of 1st November, 1943, stated that the criminals, i.e., the actual perpetrators of atrocities, should be tried according to the laws and in the courts of the countries in which the crimes have been committed. The major leaders who did not themselves carry out atrocities but ordered their commission are to be "punished by a joint decision of the Governments of the Allies." This may mean either a verdict following a legal hearing or a political decision without the formality of a trial.

The United Nations must choose between two methods of punishing the leaders who directed the enemies' atrocities. The sentence of exile on Napoleon was a political and not a legal sentence. At that time the idea of international sanctions for the commission of atrocities was only beginning to develop. At the time of the 1914–18 war the conception of punishing war criminals was already accepted, although differences of opinion existed between the various Allies. Paragraphs 227–231 of the Versailles Treaty were a compromise and created sufficient loopholes to enable war criminals to escape international sanctions. However, the principle of trial before international legal tribunals was firmly established, and Kaiser Wilhelm only escaped standing in the dock by fleeing to Holland. Holland was able to refuse extradition as it was demanded, not on account of the commission of definite known crimes, but because of the "vague ground" of "an offence against the sanctity of treaties and the morality of nations." This shows the limitations of "political punishment" and the necessity for the establishment of an international penal court with its own definite codex to punish the war leaders responsible for atrocities.

An International Penal Court.

On 21st August, 1942, Mr. Roosevelt said: "The time will come when they (the criminals) will have to stand in courts of law in the very countries which they now oppress, and answer for their acts." Mr. Churchill indorsed this view on 7th October, 1942. The principle of national courts for the trial of war criminals was accepted in the Moscow Declaration of 1st November, 1943. The acceptance of territorial courts of law punishing offences committed within their jurisdiction is no new departure, but is an expression of the general conception of punishment for criminal offences. The principle of punishing Axis personnel locally for criminal offences committed against citizens and the State of occupied countries is the most practicable and satisfactory method of punishment. Crimes committed locally should be punished locally, and if the local code does not provide for punishment for a particular evil act, suitable punishment must be found for the crime in question. Some people object to this, saying that *nullum crimen sine lege* is a principle which should prevent *ex post facto* legislation. To allow this legal maxim to be used in this way would create a Magna Carta for war criminals. To torture prisoners in German concentration camps must be punishable even if German law permits such acts. The concentration camp torturer suffers no hardship for being punished in this way, for it must have been clear to him at the time when he acted that his conduct would have been punishable in any civilised country.

Persons whose offences have no particular geographical location cannot be tried by territorial courts, and in the words of the Moscow Declaration "punishment by the joint decision of the Allied Governments" is necessary.

Thus the majority of Axis criminals will be tried by the various national criminal courts. A number of persons will, however, remain who have to be punished by an international tribunal. The First Commission of the London International Assembly under the chairmanship of General de Baer suggests an international criminal court to try the following cases:—

(1) Where national courts for political or other reasons refuse to try Axis criminals that would ordinarily be triable locally.

(2) Where the criminal has committed crimes in several countries.

(3) Where the crimes lie outside the agreed competence of all national courts. Into this group fall crimes committed in Germany against Jews and against Stateless persons.

(4) Crimes committed by heads of States.

What are the chief objections against such an international criminal court? Firstly, it is said that the difficulty of procedure and the difficulty of choosing the appropriate code of law are grave obstacles. Secondly, the fact that a code of law has to be evolved raises the objection that crimes are made which were not previously known to be crimes according to the codex of the international court. Thus the principle of "*nulla pœna et nullum crimen sine lege*" is invoked in this connection. Sheldon Gluck, Professor of Law at Harvard University, deals with these objections in the following way: The situation as to the laws and customs of war as part of the law of nations is more analogous to that of the early English legislative law. During the early stages of any system of law the courts must to some extent legislate. They must make "law" as the English common law courts had to make it. Whenever a common law court for the first time declared some previously unprohibited act to be punishable as a crime by holding the first doer of it criminally liable, it did something "*ex post facto*." It legislated, despite the fiction that it only "found" or "declared" the law which had previously existed all the time; it declared a previously non-existent "*lex*" and imposed a previously non-existent "*pœna*."

In the problem under review the objection of retrospective legislation does not really apply, as all acts triable by the international criminal court would, generally speaking, be punishable by the codex of all civilized countries.

Some lawyers object to the setting up of an international criminal court by reason of lack of precedent. But all courts were at one time unprecedented. The atrocities committed by the Axis powers are unprecedented, and courts must therefore be created to cover all crimes committed by these criminals if existing courts are insufficient.

Lastly, it is claimed that an international criminal court set up by the victorious powers to judge their enemies would not really be a legal tribunal but an instrument of revenge in legal guise. It must be realised that the Allies are struggling to establish certain ideals of justice and good faith, and that the punishment of offenders against these ideals in accordance with them is an essential part of this struggle.

What is a War Crime?

It is essential that war crimes should be clearly defined and the penalties for their commission laid down. The Hague Convention only forbids certain acts in time of war, but does not declare them crimes or lay down any punishment for their commission. The Commission of War Guilt in 1919 adopted the principle that citizens of enemy States are fully responsible for acts that are in conflict with the laws and practices of warfare, and for acts contrary to the "principles of humanity and the conscience of the world." This principle was not, however, adopted by the Peace Conference, and the Versailles Treaty articles 227–231 restricted the definition of war crimes to the vague terms of the Hague Convention, with the results that war criminals remained unpunished. The Hague Convention is clearly insufficient as a codex for the purpose of punishing war criminals in 1944.

The expression "war crime" arose during the time when it was thought that war could be carried out in a humanised fashion. Total war, which is directed against the whole enemy population, changes the whole meaning of the term. Thus the Hague Convention only deals with crimes committed in or near a battlefield. It does not cover the many criminal acts committed in preparation for the present war, crimes committed in connection with the war though not on the battlefield, or even acts against citizens of the enemy State itself, such as Jews in Germany. It is clear that acts necessitated by the waging of war and reprisals cannot be classified as war crimes.

The present situation is paradoxical. The ordinary man in the street understands a war crime to be any act which is in conflict with the "principles of humanity and the conscience of the world." The leaders, too, speak in similar terms. Thus President Roosevelt, speaking about the punishment of Mussolini, says: he and his fascist gang will be brought to book for their crimes against humanity. Mr. Churchill, too, speaks generally of "Nazi crimes and the Fascist crimes." If the law is not to become a shield for war criminals, war crimes must be defined in accordance with the changed conditions of total war. The First Commission of the London International Assembly says: "War crimes are grave outrages violating the general principles of criminal law as recognised by civilized countries and committed in war-time, or coincident with the preparation, the waging or the prosecution of war or perpetrated with a view to preventing the restoration of peace." This includes (1) war crimes in terms of international legal doctrine; (2) the preparation for, and waging of aggressive warfare; (3) all crimes aiming at exterminating races, nations, or political parties.

An important legal problem arises on the question of whether the carrying out of military orders by a subordinate shall afford the subordinate a defence in law for atrocities committed by him. Professor Lauterpacht, in his memorandum on the punishment of war criminals, laid before the Cambridge International Commission for Penal Reconstruction and Development, showed that with the exception of the Anglo-Saxon countries the plea of "obedience to superior orders" is not a valid defence. Even in the English and American codes this defence is not recognised in practice. Thus, one Wirz, a supervisor of a prison camp in Georgia, was condemned to death and executed in 1865 for carrying out orders given by a superior officer which had fatal results. The judge advocate in that case said that both the superior and the subordinate must answer for such acts.

If war criminals are tried in accordance with ordinary legal principles in national or international criminal courts, the general limits of "obedience to superior orders" as a defence will be easily definable. The First Commission of the London International Assembly passed the following resolution on this defence: "An order given by a superior to an inferior to commit crime is not in itself a defence. The court may consider in individual cases whether the accused was placed in a state of irresistible compulsion and acquit him or mitigate the punishment accordingly. The defence that the accused was placed in a state of compulsion is excluded (*a*) if the crime was of a revolting nature, (*b*) if the accused at the time when the crime was committed was a member of an organisation the

membership of which implied the duty to execute criminal orders." *Thus volunteers in the S.S. are clearly unable to use this defence.*

The implications of this resolution were fully borne out by the Kharkov trials. Although the accused S.S. men pleaded "obedience to superior orders," their monstrous actions and their voluntary membership of the S.S. resulted in the death penalty.

The principle, as stated above, seems to be generally accepted by lawyers. It only remains for the individual Governments to accept it implicitly to remove the danger of many war criminals availing themselves successfully of this defence in cases where they clearly ought not to be able to do so.

THE EXTRADITION OF WAR CRIMINALS.

The problem of bringing war criminals before the courts is a legal, technical and police matter and does not really raise any problems of legal principles. It is, however, sufficiently important to be mentioned here. The existing extradition laws are clearly unable to safeguard the retribution on the many thousands of criminals who will seek sanctuary in neutral countries.

The commission of the United Nations for the trial of war criminals has already begun to function and we may thus be able to avoid the disagreements which arose after the last war. Again, war criminals will have to be exchanged between the various United Nations. This will have to be done by the temporary modification of existing extradition treaties to suit immediate post-war needs, otherwise one or other Allied Nation might refuse to hand over war criminals, especially citizens of the lesser Axis countries such as Finland or Hungary.

A mutual agreement between the Allies. Talks to this effect are in fact already taking place. If it is brought about it may induce neutral countries to bar their doors to fleeing war criminals. It is probably unlikely that the neutral countries would vary their extradition laws in favour of an allied demand for the extradition of war criminals unless the demand is based on actual crimes recognised in the extradition treaties of such neutral countries. In view of the nature of most of the criminal acts committed during the present war, this demand should, however, be easily met. Furthermore, if an international criminal court is set up, allied countries might be found to agree more easily to extradition demands issued by that court.

It can be seen that the retribution of war crimes cannot be brought about merely by good intentions. The active co-operation of allied lawyers is necessary now to set up such tribunals as will make it clear to potential war criminals that the international community of nations punishes atrocities as thoroughly as the national State punishes ordinary crimes. This co-operation may well prove to be one of the corner stones of world peace.

Parliamentary News.

HOUSE OF LORDS.

Army and Air Force (Annual) Bill [H.C.].
Read Third Time. [19th April.

HOUSE OF COMMONS.

Pensions (Increase) Bill [H.C.].
In Committee. [18th April.

QUESTIONS TO MINISTERS.

JUDICIAL COMMITTEE FEES (ORDER).

Sir HERBERT WILLIAMS asked the Lord President of the Council why the Order in Council, Judicial Committee Fees, approved by His late Majesty, King Edward VIII, on 30th April, 1936, was not published till after a lapse of nearly eight years as Statutory Rule and Order, No. 192, of 1944; to what extent effect was given to this Order in Council during the period it was not published; and whether his attention has been drawn to the fact that the first reference to the Order in Council of 1936 is contained in the Order in Council (S.R. & O., No. 193/L.14, of 1944), approved on 25th February, 1944, and published in April, 1944.

THE LORD PRESIDENT OF THE COUNCIL (Mr. Attlee): I am informed that, in connection with a recent amendment of the Judicial Committee Rules, 1925, the notice of the Editor of Statutory Rules and Orders was drawn to the fact that owing to inadvertence the Order in Council of the 30th April, 1936, to which my hon. friend refers, was not at that time published as a Statutory Rule and Order. It was accordingly decided to issue it with the more recent amending Order. The Order of 1936 has had effect since the date of its approval; but it was published in the *London Gazette* on 8th May in that year and its provisions have in consequence been available to those affected by it. As regards the last part of the question, my attention had not previously been drawn to the matter. [18th April.

LAW OF SUCCESSION (ADOPTED CHILDREN).

Major PROCTER asked the Secretary of State for the Home Department whether he is aware that the property of an adopted child who dies under the age of twenty-one years, and therefore intestate, goes to the natural and not to the adopted parents; and whether he will introduce legislation to put an end to this anomaly.

Mr. HERBERT MORRISON: The Tomlin Committee, on whose recommendation legal adoption was introduced into the law of this country by the Adoption of Children Act, 1926, gave careful consideration to the question whether the law of succession should be amended as regards adopted children, but decided at the time that this was not advisable. Experience has not revealed any strong cases for amendment of the law and I should not feel justified in proposing legislation at the present time to deal with this matter.

Major PROCTER: Is the right hon. gentleman aware that during the war a great many people, with adopted children, have invested in War Loans for the benefit of the children and that in the event of the death of such children this money would go to the natural parents and thus cause a grave injustice?

Mr. MORRISON: I agree that more than one view can be fairly held about this matter, but I do not think I should be justified in bringing legislation forward at this juncture. [20th April.

Notes and News.

Honours and Appointments.

The Lord Chancellor has made the following appointments in connection with the vacancy caused by the retirement of Sir Henry Methold from the office of Master in Lunacy: Mr. A. H. R. W. POYSER, C.B.E., to be Master in Lunacy in the place of Sir Henry Methold; Mr. F. L. RATTO, M.C., to be Assistant Master in Lunacy, in the place of Mr. A. H. R. W. Poyser; and Mr. A. J. JOHNSTON to be Assistant to the Master, in the place of Mr. F. L. Ratto.

The Board of Trade have appointed Mr. F. S. TREDINNICK to be Assistant Registrar of Companies and Assistant Registrar of Business Names in place of Mr. P. Eke, retired.

The Minister of Fuel and Power has appointed Mr. T. F. TURNER, K.C., to be Regional Controller of the North Midland Region in succession to Mr. Evershed. Mr. Turner has been working at the Ministry on special investigations concerning the coal-mining industry, and in particular with the training of juveniles entering that industry. Mr. Turner was called by the Inner Temple in 1924 and took silk in 1943.

Mr. HUMPHREY WOLSELEY WIGHTWICK has been appointed a Metropolitan Police Magistrate in succession to Mr. William John Henry Brodrick, who has resigned. Mr. Wightwick was called by the Inner Temple in 1914.

Mr. PAUL ERNEST SANDLANDS, K.C., has been appointed Recorder of Birmingham in place of Mr. Justice Wallington. Mr. Sandlands was called by the Inner Temple in 1900 and took silk in 1935.

The Archbishop of Canterbury has appointed Mr. J. NEVILLE GRAY, K.C., as Commissary General of the City and Diocese of Canterbury, to fill the vacancy caused by the elevation of Mr. H. B. Vaisey, K.C., D.C.L., to the Bench. Mr. Gray was called by Lincoln's Inn in 1909, and took silk in 1938.

Notes.

On 4th May, the International Lawyers Group will hear M. Manfred Simon, who is legal adviser to the French delegation on the War Crimes Commission, speak on two topics: (1) The effect of nazi occupation on the administration of justice in France; (2) the trial of Pucheu. The meeting, to which all members of the legal profession are invited, will take place at the Royal Empire Society, Northumberland Avenue, W.C.1, at 5 p.m. Tea will be served at 4.30 p.m.

It has been announced in the *London Gazette* that the King has appointed the Right Hon. Sir Gavin Turnbull Simonds, Kt., one of the Justices of His Majesty's High Court of Justice, to be a Lord of Appeal in Ordinary, and has granted him the dignity of a Baron for life by the style and title of Baron Simonds of Sparsholt in the County of Southampton. The King has also been pleased to approve that the honour of knighthood be conferred upon the Hon. Mr. Justice Evershed on his appointment as a Justice of the High Court of Justice.

A question was raised recently, before Wrottesley, J., on an issue directed by the Court of Appeal as to whether a settlement had been arrived at in an action, which was disputed by the plaintiff. Wallington, J., who, before his recent elevation to the Bench as a Judge of the Probate, Divorce and Admiralty Division, had acted as leading counsel for the defendant in the action, gave evidence as to the circumstances in which, as he knew them, the settlement alleged had been reached. His lordship, who was accommodated with a seat on the Bench, was cross-examined by Mr. N. C. L. Macaskie, K.C., who now represented the plaintiff in the action.

Wills and Bequests.

Mr. Cecil Henry Oliverson, barrister-at-law, of Earsham Hall, Bungay, Suffolk, left unsettled estate already valued at £180,489, settled land now valued at £92,200, making a total of £272,689.

Court Papers.

EASTER SITTINGS, 1944.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.			EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice EVERSHED
Monday	May	1	Mr. Hay	Mr Jones	Mr. Reader
Tuesday	,,	2	Farr	Reader	Hay
Wednesday	,,	3	Blaker	Hay	Farr
Thursday	,,	4	Andrews	Farr	Blaker
Friday	,,	5	Jones	Blaker	Andrews
Saturday	,,	6	Reader	Andrews	Jones

			GROUP A.		GROUP B.	
DATE.			Mr. Justice COHEN *Non-Witness.*	Mr. Justice VAISEY *Witness.*	Mr. Justice MORTON *Witness.*	Mr. Justice UTHWATT *Non-Witness.*
Monday	May	1	Mr. Andrews	Mr. Blaker	Mr. Hay	Mr. Farr
Tuesday	,,	2	Jones	Andrews	Farr	Blaker
Wednesday	,,	3	Reader	Jones	Blaker	Andrews
Thursday	,,	4	Hay	Reader	Andrews	Jones
Friday	,,	5	Farr	Hay	Jones	Reader
Saturday	,,	6	Blaker	Farr	Reader	Hay